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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

NO. 86-1003 (N)

THOMAS SALINAS, ET AL.
Petitioners

v.

ROADWAY EXPRESS, INC., ET AL.
Respondents

On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

RESPONDENT UNIONS' BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

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Respondents INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (hereinafter "IBT" or "International"). SOUTHERN CONFERENCE OF TEAMSTERS (hereinafter "SCT"), and LOCAL UNIONS 657 AND 988[1] respectfully request that this Court deny the Petition for Writ of Certiorari, seeking review of the Fifth Circuit's opinion in this case. That opinion is reported at 802 F.2d 787.

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[1] We are authorized to advise that all appellees in the court below join in opposition to the Petition, although not approving or adopting all the rationale herein.

For purposes of what follows, we accept the Petitioners' statement of Questions Presented and Statement of the Case.

REASONS WHY THE WRIT SHOULD BE DENIED

1. In essence, the Petition seeks a review of factual findings and evidentiary analysis, thus presenting no sufficient basis justifying grant of the Petition.

The Petition in this case seeks review of the Fifth Circuit's affirmance of a District Court judgment entering a Consent Decree in this prolonged litigation [now sixteen (16) years old]. Petitioners' complaint centers on the Consent Decree's grant of retroactive (to 1971) competitive job seniority in over-the-road jobs to ten (10) individual class members. The Petition generally complains that the Fifth Circuit erroneously affirmed the District Court's purported abuse of discretion in entering the Consent Decree, because the Decree's restriction of retroactive seniority relief to ten (10) named individuals was and is "not fair, just nor adequate..." and constitutes a "radical departure from the intent and purpose of Title VII. ..."[2] (Petition, pp. 7, 9, 12).

As noted by the Fifth Circuit, the Consent Decree approved by the District Court came at the conclusion of "protracted and emotionally charged negotiations ...", with the distinct possibility that by pursuing further litigation of the case "the plaintiffs' class would have risked dismissal of the action as untimely [under *United Airlines v. Evans,* 431 U.S. 553 (1977)], thereby losing *all* relief." (App. 4a; 802 F.2d at 788-89). The stark reality that further litigation of this case could well have resulted in denial of *any* relief to *all* class members cannot be overemphasized.

Prior to entering the Consent Decree, the District Court conducted proceedings to test the Decree's fairness, with but forty-two (42) members of the one hundred twenty-two (122)

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[2] The central statute involved, otherwise referred to as "the Act" is Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.*

member class stating objections to Decree provisions concerning back pay, seniority relief, or both. The District Court's ultimate conclusion that the Consent Decree was "fair, adequate and just" was buttressed by detailed findings of fact. The Fifth Circuit reviewed the entirety of these findings on the record before it, and concluded that "under applicable legal standards, the District Court's order entering the Consent Decree [should be] affirmed." (App. 8a; 802 F.2d at 790).

The gravamen of the Petition is to quarrel with evidentiary findings by the District Court, approved and adopted by the Fifth Circuit, that retroactive seniority relief accorded by the Consent Decree was reasonably related to road job vacancies available to class members during the period of time in which Roadway was purportedly discriminating in the filling of over-the-road driving jobs. The Fifth Circuit specifically addressed Petitioners' claim that the Consent Decree's retroactive seniority relief was insufficient, and rejected it. Rather, the Fifth Circuit held that there was "no support" in the record for the claim that the District Court incorrectly calculated the number of available vacancies upon which retroactive seniority relief could be based, and concluded that the District Court had properly acted within its discretion in approving the Consent Decree's grant of retroactive seniority to ten (10) named individuals. (App. 5A-6A; 802 F.2d at 789). As we have said, the predominate thrust of the Petition is to argue that factual findings which govern the number of available vacancies are erroneous. (Petition, pp. 9-12).

Petitioners do not seek resolution of a conflict among the Circuits, nor present for determination an important, unsettled point of federal law.[3] Instead, they merely continue their quarrel with the District Court's factual findings and related evidentiary analysis. It is axiomatic that this Court will not grant a Petition of Certiorari to review the lower courts' resolution of evidentiary issues. *E.g. General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175 (1938); *United States v. Johnston,* 268 U.S. 220 (1925). Thus, the Petition presents no proper basis for granting the Writ.

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[3] *See* Rule 17, Rules of the Supreme Court.

2. The Court should not grant the Petition for the purpose of "rethinking" *International Brotherhood of Teamsters v. United States.*[4]

Tacitly acknowledging that this Court cannot grant petitions for the purpose of reviewing lower courts' factual findings, Petitioners are ultimately compelled to argue that this Court should "rethink" its holding in *International Brotherhood of Teamsters v. United States*," 431 U.S. 324 (1977). (Petition, pp. 7-9).

Teamsters is indeed central to disposition of Petitioners' claim that the Consent Decree's seniority relief is inadequate. There, the Court was confronted with a claim that where a freight employer has discriminated against minority employees in the filling of road jobs, a contract seniority system which provides for road job seniority beginning with date of hire in the road bargaining unit unlawfully perpetuates the employer's discrimination, in violation of the Act. After careful consideration of the legislative history underlying Section 703(h) of the Act, 42 U.S.C. Section 2000e-2(h), the Court held that *bona fide* seniority systems, such as that in the case at bar, do not violate the Act simply because they provide for job seniority in a particular bargaining unit based on date of hire in that unit. (*See* 431 U.S. at 350-56). In the context of this holding, the Court in *Teamsters* then carefully analyzed and rejected the contention that where an employer discriminates against minority employees in the filling of over-the-road jobs, *all* members of the affected class are automatically entitled to retroactive seniority relief. Instead, the Court held that retroactive seniority relief must be restricted to *actual discriminatees*, those members of the class who are shown by record evidence (a) to have actively sought or desired road jobs, (b) to have been qualified for such road jobs and (c) as to whom *over-the-road job vacancies existed and were discriminatorily filled. Teamsters v. United States, supra* at 356-76. Petitioners' request that the Court now "rethink" *Teamsters* is a bald attempt to obtain

[4] 431 U.S. 324 (1977).

precisely the sort of indiscriminate class relief which *Teamsters* squarely rejected. Reversal of *Teamsters* is the only vehicle by which Petitioners may escape the effect of the lower courts' findings that the Consent Decree's retroactive seniority relief bears reasonable relation to available road job vacancies.

Teamsters cannot be swept away simply to serve Petitioners' peculiar personal interest. Indeed, an important element of this Court's holding in *Teamsters* has served as the touchstone by which federal courts have since sought to reconcile competing employee interests in fashioning Title VII relief.

This Court's refusal in *Teamsters* to countenance a general award of indiscriminate class-wide relief, without reference to proof of individual discrimination based on existing job vacancies, was grounded in a strong concern for the rights and interests of other innocent employees within the contract seniority system —the ability of these other innocent employees to protect and enjoy the job security and benifits *they* have earned by employment under the contract. *Teamsters, supra* at 372-73. *Teamsters* has since served as a linchpin for important decisions of this Court which reaffirm the contract rights of other innocent employees. *Firefighters Local Union No. 1784 v. Stotts,* 467 U.S. 561 (1984); *W.R. Grace & Co. v. Rubberworkers,* 461 U.S. 757 (1983); *Ford Motor Co. v. EEOC,* 458 U.S. 219 (1982). *Cf. Steelworkers v. Weber,* 443 U.S. 193 (1979). "Rethinking" of *Teamsters* for the purposes espoused by Petitioners—to obtain an award of indiscriminate classwide relief *regardless* of evidence concerning the existence of available vacancies—would require wholesale disregard of the rights of innocent employees, and could utterly shred the fabric carefully woven by the entire line of decisions recited above. Petitioners present not a whit of cogent legal argument warranting this drastic result.

Finally, it is significant that Petitioners' prayer for reversal of *Teamsters* comes in the context of judicial review of a consent decree. This Court has squarely held that under such circumstances, the lower court has relatively broad discretion in adopting and approving a consent decree, even one which provides for seniority relief seemingly at odds with existing case law. *See Local No. 44, Int'l. Assn. of Firefighters v. City of Cleveland,* _____ U.S. _____, 54 L.W. 5005 (1986). As we have said, in

this case both the District Court and the Fifth Circuit carefully analyzed the Consent Decree's seniority relief, and concluded that it bore reasonable relation to record evidence concerning available road job vacancies. Thus, as we have shown before, legal standards governing the award of seniority relief have been well served by the Consent Decree's approval below, and Petitioners present no valid equitable consideration to support their claim for more retroactive seniority relief. In short, it could serve no legitimate purpose whatsoever for this Court to "rethink" its landmark *Teamsters* decision in the context of a Consent Decree which, on any reasonable analysis, was properly approved and entered by the District Court in the sound exercise of its discretion, in compliance with governing case law.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing "Respondents Unions' Brief in Opposition to the Petition for Certiorari" has this day been forwarded by certified mail, return receipt requested, to counsel of record herein as follows:

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